

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Jonathan S. Daniels,
Plaintiff

vs

Case No. 1:04-cv-294-SSB-TSH
(Beckwith, C.J.; Hogan, M. J.)

L.A. Vachula, et. al.,
Defendants

REPORT AND RECOMMENDATION

Pro se plaintiff Jonathan S. Daniels initiated this action with the filing of a complaint on April 28, 2004. (Doc. 1). Plaintiff's complaint sets forth allegations involving a traffic citation plaintiff received while traveling in Grant Parish, Louisiana in 1999, and subsequent Louisiana state court proceedings. Plaintiff's complaint purported to set forth claims pursuant to 42 U.S.C. § 1983 and named as defendants L.A. Vachula, Louisiana State Trooper, the Louisiana Department of Public Safety and Correction, L.R. Hataway, Sheriff's Deputy for the Sheriff's Office of Grant Parish, The Ohio Bureau of Motor Vehicles, Hamilton, County, Ohio, Municipal Court, and Ron P. Collins, Esq. (Id.). Defendants Ohio Bureau of Motor Vehicles and Hamilton County, Ohio Municipal Court (the Ohio Defendants) filed motions to dismiss on June 24 and July 7, 2004, respectively. (Docs. 6, 8). On November 18, 2004, this Court issued a report and recommendation that the motions to dismiss be granted. (Doc. 11). The District Court adopted this Court's recommendation by order dated December 10, 2004, and the Ohio defendants were dismissed from this action. (Doc. 12).

On March 24, 2005, upon review of the record, this Court noted that the record did not reflect proper service of the complaint upon the remainder of the defendants. The Court also noted that Plaintiff had failed to take any action to prosecute this case

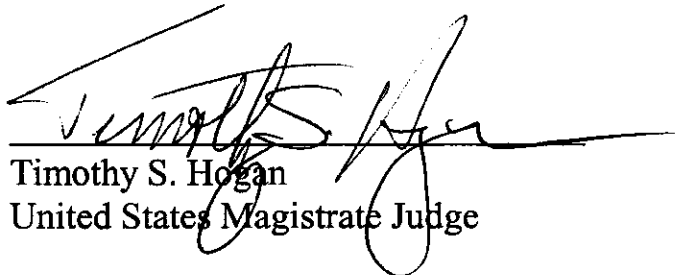
since filing a memorandum in opposition to the motions to dismiss on August 24, 2004, (Doc. 10), and mail addressed to plaintiff from the Court was returned as undeliverable on December 17, 2004. (Doc. 13). Consequently, the Court ordered plaintiff to show cause, in writing and within ten days of filing of the March 24, 2005 Order, why this action should not be dismissed for lack of prosecution. (Doc. 14).

Plaintiff responded to the Court's Show Cause Order on April 7, 2004. Plaintiff's response, captioned "Cause of Action" sets forth a list of documentary evidence plaintiff apparently intends to present in support of his case. (Doc. 16). However, the response in no way addresses the fact that plaintiff has not provided proof of service of the complaint on any of the remaining defendants. (Id.). As the Court stated in its March 24, 2005 Order, Rule 4 requires that service of a copy of the complaint and summons be made upon a defendant within 120 days of the filing of the complaint. The Rule states in pertinent part:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. . . .

Fed. R. Civ. P. 4(m).

In this case, plaintiff has not given any explanation for the apparent failure to have served the complaint on the remaining defendants. Accordingly, the Court RECOMMENDS that this action be dismissed as to the remaining defendants and terminated on the docket of this Court.


Timothy S. Hogan
United States Magistrate Judge

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NOTICE

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on 4-14-05 . Any party may object to the Magistrate's findings, recommendations, and report within fifteen (15) days after the filing date of this report and recommendation or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

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<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Jonathan Daniels 9 Milky Way Fairfield, OH 45014</p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p>
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
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